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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,075	09/10/2003	John Campbell	C03187US N1128.2C4	8995
22920	7590	09/30/2004	EXAMINER	
GARVEY SMITH NEHRBASS & DOODY, LLC THREE LAKEWAY CENTER 3838 NORTH CAUSEWAY BLVD., SUITE 3290 METAIRIE, LA 70002			CHANNAVAJALA, LAKSHMI SARADA	
			ART UNIT	PAPER NUMBER
			1615	

DATE MAILED: 09/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/659,075

Applicant(s)

CAMPBELL ET AL.

Examiner

Lakshmi S Channavajjala

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12-15-03.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

### DETAILED ACTION

Claims 1-8 are pending.

#### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claims 1-8 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 5,968,534; claims 1-4 of U.S. Patent No. 6,228,379, and claims 1-6 of U.S. Patent No. 6,419,939. Although the conflicting claims are not identical, they are not patentably distinct from each other because the epidermal softening agents and the oil based carriers of the patented claims encompass emollients such as borage oil or evening primrose oil of instant claims, which in turn is claimed as a source of gamma linolenic acid. Instant claims as well as the patented claims are directed to a composition comprising an astringent, an epidermal softening agent and a hair-stiffening agent, for treating pseudofolliculitis as well as method of treating pseudofolliculitis. Therefore, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to use the

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composition of the patented claims containing components having the same activity as that of the instant with an expectation to effectively treat pseudofolliculitis.

***Claim Rejections - 35 U.S.C. § 112***

Claims 1-8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Instant claims recite components such as skin astringent, epidermal softening agents and hair stiffening agent, which encompass a wide range of substances. However, instant specification only describes powdered oatmeal as a skin astringent but fails to describe any other astringent compound or substance. With respect to epidermal softening agents and hair stiffening agents claimed, instant specification only describes an emollient mixture made of mink oil, apricot kernel oil and wheat germ oil; and vitamin A respectively. Whereas US Patent No. 4,569,839 (cited on PTO-1449) teach cosmetic compositions containing various plant extracts and describe several plant extracts that possess astringent properties (col. 3, lines 16-33) and emollient properties (col. 2, lines 27-40). Thus, applicants are not possession of all skin astringent compounds, epidermal softening agents and emollients that encompassed by instant claims.

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Claims 1-8 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The reasons are as follows:

A. Claims 2 and 3 recite "GLA would be provided" which is vague as it unclear if the GLA source is from borage oil or evening primrose oil or not. The expression as such does not require GLA to be obtained from the claimed sources.

B. In claim 4, applicant uses the limitation "further consisting of" improperly as claim 1 is closed by the transitional phrase "consisting of", which limits the claim to the named components only.

C. In claim 5, the following expressions are indefinite:

"a little over two parts in ten" is indefinite as to the concentration intended by "a little over" and as to the ten parts is referring to.

"approximately" is indefinite, as it does not state precisely how many parts of absorbent hair stiffening agent.

"two parts in ten" are indefinite as to what these parts are referring to. The same is true for (b)-(d).

D. Claim 6 recites, "consisting at least a blended mixture", which is indefinite because the tem "consisting of" is close-ended and limited to the components recited in the claim, and does not allow for the presence of components other than those recited. It is unclear if applicants wish to claim more components than those listed in the claim.

E. In claim 8, the term "susceptible" is unclear as to what applicant's intent is. "In each day of use" is indefinite as to the time of use and what is being used.

F. In claim 5, part d), "Cool" is indefinite and should read "cold".

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G. In claims 1-7, the word "compound" is improper because the claims recite a mixture of components, which constitute a composition. Accordingly, replacing the word "compound" with "composition" would overcome the rejection.

Appropriate correction and/or clarification is requested.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents teach treatment for pseudofolliculitis barbae. However, they do not teach or fairly suggest a composition "consisting of" an astringent, epidermal softening agent and a hair-stiffening agent in an absorption promoting oil based carrier, for the treatment of pseudofolliculitis.

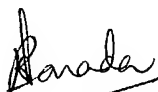
US 5,721,275 to Bazzano, US 5,204,093 to Victor and US 4,944,939 to Moore.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 7.30 AM -4.00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lakshmi S Channavajjala

Examiner

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September 27, 2004